



June 16, 1999

Gloria Blue, Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative's Office
600 17th Street, N.W.
Washington, DC 20508
Attn: William Corbett, Esq.

Dear Mr. Corbett,

Three months ago, CompTel filed comments in support of Carrier1's 1377 complaint regarding serious interconnection obstacles in the German market. We write now to provide a brief update to our comments in response to your request for comment regarding WTO implementation in Germany. USTR seeks comment on whether, taking into consideration RegTP's recent decisions in the EconoPhone and Atypical Traffic proceedings, Germany "has made the necessary legislative or regulatory changes to implement its commitments, or permits acts, policies, or practices in its markets that do not appear to be in compliance with the WTO Basic Telecommunications Agreement."

CompTel commends the U.S. Government for its engagement with the German authorities over serious interconnection problems in Germany, and encourages the U.S. Government to continue to monitor closely interconnection developments in Germany. In our view, the recent decisions of RegTP's Ruling Chamber Number 4 in the EconoPhone and Atypical Traffic proceedings provide at least temporary improvement in legal requirements and costs for interconnection in Germany with respect to Deutsche Telekom's (DTAG's) atypical traffic arguments. These decisions have clarified interconnection conditions and rates, rejecting many of DTAG's most aggressive assertions with regard to interconnection rates, mandatory minimum POI deployments, minimum traffic penalties, and deposits for POIs.

However, to our knowledge, DTAG has not issued a new standard interconnection agreement on the basis of these decisions that new entrants may use to negotiate interconnection

agreements. Therefore the discrimination in interconnection conditions¹ identified in the EconoPhone decision has not yet been cured in fact. Furthermore, the decisions provide an

¹ See Reference Paper, § 2.2(a).

improvement of uncertain duration that will be revisited when Germany adopts its new interconnection regime in the year 2000. Indeed, these decisions clearly left open the possibility of higher rates and additional conditions for interconnection for "atypical traffic" when the interconnection regime is revised.

CompTel has begun what we hope will be productive discussions with RegTP regarding allowing competing carriers to share POIs to satisfy the 48.8 erlang gradual POI deployment rule set forth in the EconoPhone decision. We hope that the U.S. Government will encourage Germany to adopt this approach, which would substantially reduce the anti-competitive effects of the 48.8 erlang requirement, thereby helping to fulfill Germany's obligation to prevent DTAG from "engaging in . . . anti-competitive practices."²

In addition, outside the realm of "atypical traffic" arguments, Germany still has not met its commitments with regard to several fundamental features of the WTO Reference Paper. First, German law has failed to impose effective time limits that prevent DTAG from delaying competitors' requests for interconnection. Indeed, DTAG continues to force its competitors to wait for up to a year for interconnection in desirable locations – a delay that falls far short of Germany's commitment to provide interconnection "in a timely fashion."³

Second, Germany has still failed to establish interconnection "terms, conditions . . . [and] rates that are transparent."⁴ DTAG continues to exploit a business record confidentiality provision under German law to shelter the data supporting its claims for higher rates and onerous technical conditions from rebuttal or public scrutiny. This defect in German law will become even more important when RegTP considers a new rate structure for the year 2000. Accordingly, the U.S. Government should continue to press the German authorities to establish a protective order system that will satisfy Germany's WTO commitment in this regard by creating a transparent, adversarial process for establishing interconnection rates and conditions that does not compromise business secrets.

Furthermore, interconnection agreements and RegTP's decisions are still not transparent. DTAG's competitors continue to be unable to inspect each other's interconnection agreements with DTAG except in heavily redacted form – thereby giving the incumbent a significant advantage in these negotiations. In addition, despite repeated suggestions from competitors and U.S. Government agencies, RegTP has still not placed its interconnection decisions online – even with the names of the parties redacted to protect asserted confidentiality interests.

Finally, the German government has appealed a court decision invalidating its exorbitant 3 million DM (\$1.6 million) up-front charge for a national license to originate long distance and international traffic in Germany. This fee operates as a significant barrier to entry, and continues to present anti-competitive concerns.

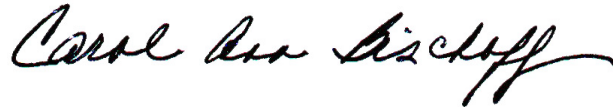
² Id. § 1.1.

³ Id. § 2.2(b).

⁴ Id.

For all these reasons, CompTel urges USTR and others in the interagency 1377 working group to monitor closely interconnection developments in Germany, to continue an active dialog with the German government on interconnection issues, and to take firm action upon announcement of the new interconnection rate structure if existing WTO concerns are not cured, or if the new interconnection regime presents other anti-competitive barriers.

Sincerely,

A handwritten signature in black ink, reading "Carol Ann Bischoff". The signature is fluid and cursive, with the first name "Carol" being the most prominent.

Carol Ann Bischoff
Executive Vice President
& General Counsel